

BEFORE  
THE PUBLIC SERVICE COMMISSION OF  
SOUTH CAROLINA  
DOCKET NO. 95-371-C - ORDER NO. 95-1353 ✓  
JULY 12, 1995

IN RE: Application of DukeNet Communications,	)	
Inc. for a Certificate of Public Con-	)	ORDER
venience and Necessity to Provide	)	APPROVING
Intrastate Telecommunications Services	)	CERTIFICATE
as a Carriers' Carrier.	)	

This matter comes before the Public Service Commission of South Carolina (the Commission) by way of the Application of DukeNet Communications, Inc. (DukeNet), a North Carolina corporation, requesting authority to provide intrastate facilities-based interexchange telecommunications services as a carriers' carrier in South Carolina. DukeNet's Application was filed on January 30, 1995, pursuant to S.C. Code Ann. §58-9-280 (1976, as amended) and the regulations of The Public Service Commission of South Carolina.

The Commission's Executive Director instructed DukeNet to publish one time a prepared Notice of Filing in newspapers of general circulation in the affected areas. The purpose of the Notice of Filing was to inform interested parties of DukeNet's Application and of the manner and time in which to file the appropriate pleadings for participation in the proceeding. DukeNet complied with this instruction and provided the Commission with proof of publication of the Notice of Filing. Petitions to Intervene were filed by Southern Bell Telephone and Telegraph

Company (Southern Bell), United Telephone Company of the Carolinas (United), and the Consumer Advocate for the State of South Carolina (Consumer Advocate). As of the time of the hearing, intervenors Southern Bell and the Consumer Advocate entered into stipulations with DukeNet. Southern Bell moved to withdraw its intervention and did not appear at the hearing. United did not appear at the hearing. The stipulations of the Consumer Advocate and Southern Bell were received into evidence.

A hearing was commenced on July 5, 1995, at 10:30 a.m. in the Commission's hearing room. The Honorable Rudolph Mitchell, Chairman, presided. M. John Bowen, Jr., Esquire and William Larry Porter, Esquire appeared on behalf of DukeNet; Elliott F. Elam, Jr., Esquire appeared on behalf of the Consumer Advocate for the State of South Carolina; and F. David Butler, General Counsel, represented the Commission Staff.

In support of its Application, DukeNet presented the testimony of John D. Snoddy, Vice President of Engineering and Operations. Snoddy explained the Applicant's request for authority to provide intraLATA and interLATA telecommunications services as a carriers' carrier in South Carolina. Snoddy explained that DukeNet would provide telecommunications services for authorized telecommunications carriers to and from Points of Presence (POP or POPs). Snoddy explained that a Point of Presence is a point on DukeNet's system where the interoffice channels and local distribution facilities are terminated.

Snoddy explained that DukeNet has constructed and proposes to operate a fiber optic telecommunications network to make available

to the public transmission capacity through point-to-point digital private line services on a carriers' carrier basis. DukeNet's services would only be provided to authorized communications carriers and not end users.

Snoddy explained that DukeNet intends to furnish its services to other communications carriers pursuant to filed tariffs. However, DukeNet testified that it would utilize contracts for bulk sales at capacity levels in excess of OC-3. The Commission is aware of the competitive nature of the market in which DukeNet's services would be provided and that DukeNet may need greater flexibility in offering services to its customers on a contract basis. For this reason, DukeNet may file under seal copies of its contracts.

Snoddy noted that DukeNet is certified to provide intrastate telecommunications services as a carriers' carrier in the State of North Carolina. Snoddy stated that the granting of DukeNet's Application would be in the public interest, and that DukeNet has sufficient financial resources to construct and operate the necessary facilities and to provide the proposed service properly and continually.

Snoddy testified that DukeNet is a wholly-owned subsidiary of Church Street Capital Corp., which is a wholly-owned subsidiary of Duke Power Company. DukeNet is authorized to do business in South Carolina.

#### FINDINGS OF FACT

1. DukeNet is a wholly-owned subsidiary of Church Street Capital Corp., which is a wholly-owned subsidiary of Duke Power

Company. DukeNet is authorized to transact business in the State of South Carolina by the Secretary of State.

2. DukeNet operates facility-based interexchange telecommunications services as a carriers' carrier.

3. DukeNet has the experience, capability, and financial resources to provide services as described in its Application.

#### CONCLUSIONS OF LAW

1. Based on the above findings of fact, the Commission determines that a Certificate of Public Convenience and Necessity should be granted to DukeNet to provide intraLATA and interLATA channel service between two points within the state as a carriers' carrier in South Carolina. We define a carriers' carrier as providing non-switched point-to-point service for authorized telecommunications carrier to and from Points of Presence.

2. The Commission approves DukeNet's proposal to utilize filed tariffs and to file with the Commission sealed contracts for bulk sales at capacity levels in excess of OC-3.

3. We believe that the guidelines heretofore adopted by this Commission for Interstate Fibernet, J.V. in Order No. 93-25, dated January 24, 1995 in Docket No. 94-424-C apply in the present case. We believe, as we did in that case, that it is in the public interest that DukeNet be allowed to carry both interLATA and intraLATA telecommunications traffic for all types of telecommunications carriers on a carriers' carrier basis (i.e., non-switched point-to-point telecommunications service) so long as the telecommunications carrier has the authority to carry such traffic. Further, telecommunications carriers having originating

and terminating interLATA traffic may transport such traffic between an interLATA carrier's POP and a telecommunications carrier's switch by the appropriate means of their choice.

4. When intraLATA traffic is transported between two connecting telecommunications carriers, the point of connection should be negotiated in good faith and agreed to by the carriers; however, if no agreement is reached, either carrier may seek a final determination from the Commission.

5. The Commission agrees with the stipulation between DukeNet and the Consumer Advocate by which DukeNet agrees that it will maintain separate books and records which identify transactions between affiliates. Duke Power Company has heretofore agreed to provide information to the Commission on an annual basis which sets forth the ratios used to allocate corporate administrative and general costs to DukeNet as well as other subsidiaries.

IT IS THEREFORE ORDERED THAT:

1. DukeNet is hereby granted a Certificate of Public Convenience and Necessity so as to allow it to provide intrastate non-switched point-to-point service to all telecommunications carriers certified by the Commission as provided for herein.

2. The filed tariffs are approved. DukeNet may utilize the filed tariffs or may file sealed contracts with the Commission for bulk sales in excess of OC-3 within thirty (30) days of execution.

3. Telecommunications carriers having originating and terminating interLATA traffic may transport such traffic between an interLATA carrier's POP and their switch by the appropriate means

of their choice.

4. That when intraLATA traffic is transported between two connecting telecommunications carriers, the point of connection must be negotiated in good faith and agreed to by the carriers; however, if no agreement is reached, either carrier may seek a final determination from the Commission.

5. The stipulations between the Consumer Advocate, Southern Bell and DukeNet are approved.

6. DukeNet must keep appropriate records as required by law and this Commission.

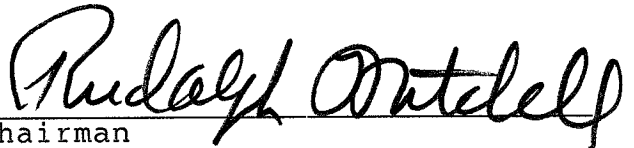
7. DukeNet must abide by the Rules and Regulations of the Commission.

8. DukeNet shall file surveillance reports on a calendar or fiscal year basis with the Commission as required by Order No. 88-178 in Docket No. 87-483-C. The proper form for these reports is indicated on Attachment A.

9. DukeNet is required to operate under the regulatory framework as set out in this Order.

10. This Order shall remain in full force and effect until further Order of the Commission.

BY ORDER OF THE COMMISSION:

  
Chairman

ATTEST:

  
Deputy Executive Director

(SEAL)

ANNUAL INFORMATION ON SOUTH CAROLINA OPERATIONS  
FOR INTEREXCHANGE COMPANIES AND AOS'S

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COMPANY NAME

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FEI NO.

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ADDRESS

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CITY, STATE, ZIP CODE

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PHONE NUMBER

- (1) SOUTH CAROLINA OPERATING REVENUES FOR THE 12 MONTHS ENDING  
DECEMBER 31 OR FISCAL YEAR ENDING \_\_\_\_\_.
- (2) SOUTH CAROLINA OPERATING EXPENSES FOR THE 12 MONTHS ENDING  
DECEMBER 31 OR FISCAL YEAR ENDING \_\_\_\_\_.
- (3) RATE BASE INVESTMENT IN SOUTH CAROLINA OPERATIONS\* FOR 12  
MONTHS ENDING DECEMBER 31 OR FISCAL YEAR ENDING \_\_\_\_\_.
- \* THIS WOULD INCLUDE GROSS PLANT, ACCUMULATED DEPRECIATION,  
MATERIALS AND SUPPLIES, CASH WORKING CAPITAL, CONSTRUCTION  
WORK IN PROGRESS, ACCUMULATED DEFERRED INCOME TAX,  
CONTRIBUTIONS IN AID OF CONSTRUCTION AND CUSTOMER DEPOSITS.
- (4) PARENT'S CAPITAL STRUCTURE\* AT DECEMBER 31 OR FISCAL YEAR  
ENDING \_\_\_\_\_.
- \* THIS WOULD INCLUDE ALL LONG TERM DEBT (NOT THE CURRENT PORTION  
PAYABLE), PREFERRED STOCK AND COMMON EQUITY.
- (5) PARENT'S EMBEDDED COST PERCENTAGE (%) FOR LONG TERM DEBT AND  
EMBEDDED COST PERCENTAGE (%) FOR PREFERRED STOCK AT YEAR ENDING  
DECEMBER 31 OR FISCAL YEAR ENDING \_\_\_\_\_.
- (6) ALL DETAILS ON THE ALLOCATION METHOD USED TO DETERMINE THE  
AMOUNT OF EXPENSES ALLOCATED TO SOUTH CAROLINA OPERATIONS AS  
WELL AS METHOD OF ALLOCATION OF COMPANY'S RATE BASE INVESTMENT  
(SEE #3 ABOVE).

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SIGNATURE

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NAME (PLEASE TYPE OF PRINT)

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TITLE